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SUPREME COURT OF THE UNITED STATES.

No. ~~180~~. 102.

ALEXANDER G. WOODS, PLAINTIFF,

vs.

THE COUNTY OF LAWRENCE, A CORPORATION OF PENNSYLVANIA.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE U. S. FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

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Among the rolls, records, and judicial proceedings of the circuit court of the United States for the western district of Pennsylvania, in the third circuit, may be found the following words and figures, viz:

No. 17 of May term, 1859, and No. 20 of May term, 1859.

ALEXANDER G. WOOD, a citizen of the State of New York, vs. THE COUNTY OF LAWRENCE, a Corporation of Pennsylvania.	Action of Debt.
SAMUEL ADAMS, a citizen of the State of Ohio, vs. THE COUNTY OF LAWRENCE.	

And now, to wit, May 20, 1859, it being agreed by the counsel of the parties, that both those cases should be tried together by the same jury, a jury being called, empanelled and sworn, do say, that they find as follows:

That the bonds were disposed of by the railroad company at twenty-five per cent. less than their par value, and if the court shall decide that the commissioners of the county of Lawrence

had authority, under the act of assembly of the 9th July, 1853, and the recommendation of the grand jury as given in evidence, that the plaintiff has a right to recover the whole amount of the coupons declared on, notwithstanding the fact that the bonds were sold less than their par value, then they assess the amount of the same with interest at the sum of nineteen hundred and fifty-eight dollars and sixty cents, ($1,958 60.)

But if the court shall be of opinion that the plaintiff can recover only in the same ratio that the bonds were sold for less than their par value, then they assess the same at the sum of fourteen hundred and sixty-eight $\frac{95}{100}$ dollars.

And if the court shall be of opinion, that by reason of the sale of said bonds for less than their par value, the plaintiff is not entitled to recover anything, they will enter a verdict for the defendant. Same verdict in No. 20, *sum less.*

And the court being divided in opinion, at the request of defendants' counsel, the following certificate of division of opinion was made out and signed by the judges:

Copy of Certificate of division of opinion.

In the Circuit Court of the United States for the Western district of Pennsylvania.—No. 77, May T., 1859.

ALEXANDER G. WOODS, a citizen of Virginia,
vs.
THE COUNTY OF LAWRENCE, a Corporation of Pennsylvania.

This was an action debt brought upon coupons attached to certain instruments purporting to be issued by the county of Lawrence to the Northwestern Railroad Company in payment of an alleged subscription of two hundred thousand dollars to the capital stock of said Railroad Company.

To plaintiff's declaration defendant put in the plea of "nil debit."

To maintain the issue on his part, plaintiffs gave in evidence a certain act of assembly of Pennsylvania entitled "An act to incorporate the Northwestern Railroad Company," approved the 9th Feb'y, 1853, which is in the following words:

An act to incorporate the Northwestern Railroad Company.

Section 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same, That James G. Campbell, George W. Smith, Jacob Zeigler, Charles C. Sullivan, Samuel A. Purviance, Samuel M. Lane, Arthur McGill, A. N. Meylert, J. N. Purviance, Dunlap McLaughlin, John Graham, John M. Sullivan, James D. Clark, be, and they are

hereby, appointed commissioners to open books, receive subscriptions of stock, and organize a company by the name, style, and title of the "Northwestern Railroad Company," with all the powers, and subject to all the duties, restrictions, and regulations prescribed by an act of assembly of this Commonwealth, entitled "An act regulating railroad companies," approved nineteenth day of February, anno Domini one thousand eight hundred and forty-nine, so far as the same are not altered and supplied by the provisions of this act.

Sec. 2d. That the capital stock of said company shall consist of twenty thousand shares, of fifty dollars each, which said capital stock may be increased, if the exigencies of the company shall require it, to any sum not exceeding two millions of dollars, as the president and directors of said company may deem expedient.

Plaintiff gave in evidence a presentment of the grand jury of Lawrence county, which is in the following words, to wit:

Docket entry—May Session, 1853.

No. 30.

Presentment Northwestern Railroad, Cl'k C., 75 } Presentment of the Grand Jury.

The grand inquest of Lawrence county, Pennsylvania, did, on the twenty-first day of May, 1853, make the following resolution:

Resolved, that the commissioners of the county of Lawrence, State of Pennsylvania, be, and are hereby, recommended to subscribe stock to the Northwestern Railroad, to the amount of two hundred thousand dollars, agreeably to the act of assembly incorporating said Northwestern Railroad Company, and to issue bonds for the payment of said stock, making the conditions such as will best promote the interest of said railroad company and the county of Lawrence.

JOHN NESBIT,
Foreman.

Plaintiffs then gave in evidence one of the instruments purporting to be issued by the county of Lawrence, under the act of assembly aforesaid, and under the presentment of the grand jury aforesaid, together with the coupons upon which suit was bro't, of which said instrument and coupons attached the following are copies, to wit:

Copy of the Bond.

$1000.	United States of America.	$1000.
No. .	County of Lawrence, Pennsylvania.	No. .

Bonds issued for Stock in the
Northwestern Railroad Company.
Faith of the County and Stock in the Company Pledged.

Know all men by these presents, that the county of Lawrence, in the Commonwealth of Pennsylvania, is indebted to the Northwestern Railroad Company in the full and just sum of one thousand dollars, which sum of money said county agrees and promises to pay twenty years after date hereof to the said Northwestern Railroad Company, or bearer, with interest, at the rate of six per centum per annum, payable semi-annually, on the first day of January and July, at the office of the Pennsylvania Railroad Company, in the city of Philadelphia, upon the delivery of the coupons severally hereto annexed, for which payments of principal and interest, well and truly to be made, the faith, credit, and property of the said county of Lawrence are hereby solemnly pledged under the authority of an act of assembly of this Commonwealth, entitled An act to incorporate the Northwestern Railroad Company, which said act was approved the ninth day of February, A. D. eighteen hundred and fifty-three.

In testimony whereof, and pursuant to said act of the legislature of Pennsylvania, and resolutions of the county commissioners, in their official capacity, passed the , the commissioners of said county have signed, and the clerk of said commissioners has countersigned these presents, and have hereto caused the seal of said county to be affixed, this day A. D. one thousand eight hundred and fifty- .

Commissioners of Lawrence County.

Clerk of Commissioners.

With twenty coupons attached, of which the following is a copy:

COUNTY OF LAWRENCE.

Warrant No. 37, for thirty dollars. Being for six months' interest on bond No. , payable on the first day of January, A. D. 1873, at the office of the Pennsylvania Railroad Company, in the city of Philadelphia.

$30.

Clerk.

The defendant, to maintain the issue on its part, gave in evidence the subscription of the commissioners of Lawrence county to the stock of the N. W. R. R. Company, which is as follows, to wit:

Agreement of Subscription made by the Commissioners of Lawrence County.

By authority of an act of the general assembly of the Commonwealth of Pennsylvania, passed the 9th day of February, A. D. one thousand eight hundred and fifty-three, entitled "An act to incorporate the Northwestern Railroad Company," and by virtue of the action of the grand jury of the county of Lawrence had at May session, A. D. one thousand eight hundred and fifty-three, at the court of said county, fixing and determining the amount of subscription to be made to the said Northwestern Railroad Company by said county of Lawrence, we, the undersigned, commissioners of said county, do hereby subscribe for and in the name of the county of Lawrence, to the capital stock of the Northwestern Railroad Company, the sum of two hundred thousand dollars, being four thousand shares in said capital stock. It is understood that whenever the amount of this subscription is required from the county of Lawrence by the said company, it is to be paid in the bonds of this county, to be given in sums of not less than one thousand dollars each, payable in twenty years after date, or such other time after date as may be agreed upon between the commissioners of Lawrence county and said railroad company. The interest on said bonds to be paid semi-annually, and said interest to be paid by said railroad company until such time as the northwestern railroad is completed.

In testimony whereof we have hereunto set our hands and affixed the seal of the said county of Lawrence, this 20th day [L. S.] of August, A. D. one thousand eight hundred and fifty-three.

JOHN RANDOLPH,
WILLIAM R. WALLACE,
Commissioners.

Attest: J. W. REYNOLDS,
Clerk.

The defendants gave in evidence further, that at the time the grand jury made their presentment aforesaid, the said Northwestern Railroad Company had not been organized; that at the time the subscription to the stock of the said R. R. Co. by the county commissioners of Lawrence county was made, the said R. R. Co. had not located upon the ground, nor in any other manner, their road, or any part thereof, within the limits of Lawrence county; and that said railroad company had not located their road through said Lawrence county up to the day of trial; and these facts were conceded.

And defendant further gave in evidence, that the said railroad company had disposed of and sold the bonds or instruments which the said county had issued in payment of her subscription, at less

than the par value thereof, to wit: at the rate of 75 cents on the dollar.

Whereupon the defendant prayed the court to charge the jury—

1st. That there was no authority in the county of Lawrence to make subscription to the stock of said N. W. R. R. Company; that said subscription and the bonds issued in payment thereof were consequently void.

2d. That the report or recommendation of the grand jury was materially deficient in not setting forth or prescribing the terms and manner of payment, and that the subscription consequently was void for want of authority.

3d. That the county of Lawrence was not authorized to issue the instrument or bonds in question.

4th. That the sale of the bonds of Lawrence county, given in payment of her subscription, below their par value, contrary to the provisions of the act of assembly, by the railroad company, avoiding the bonds in the hand of the purchaser.

5th. Upon which said prayers the said court were divided in opinion. Whereupon, the said defendant requested the judges of the said circuit court to certify under their hands and seals, and cause to be certified under the seal of said court, their difference of opinion on the said prayers of the said defendant to the Supreme Court of the United States of America, which is accordingly ; and the clerk of the said circuit court is hereby ordered to certify the same, under the seal of our said court, to the said Supreme Court at its next session, together with the special verdict of the jury rendered in this case, and the opinion of the court as filed.

In testimony whereof, we have hereunto set our hands and seals, this 25th November, A. D. 1859.

R. C. GRIER. [SEAL.]
WILSON McCANDLESS, [SEAL.]
U. S. District Judge.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, sct.

I, Henry Sproul, clerk of the circuit court of the United States for the western district of Pennsylvania, do hereby certify that the foregoing is a true and correct copy of the certificate of division of opinion signed by the judges and filed in this office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Pittsburg, this 23d [SEAL.] day of January, A. D. 1860, and in the 84th year of the independence of the United States.

H. SPROUL, *Clerk.*

Filed 22d March, 1860.